

# **WISCONSIN LEGISLATIVE COUNCIL STAFF**

## ***RULES CLEARINGHOUSE***

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## **CLEARINGHOUSE RULE 99-138**

### **Comments**

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]**

#### **2. Form, Style and Placement in Administrative Code**

- a. Parenthetical acronyms should be deleted from the rule. See ss. HFS 35.03 and 35.07 (7) (a) 10.
- b. Section HFS 35.05 (8) (a) defines “suspension” for purposes of sub. (8). However, since it appears that “suspension” is not used in sub. (8), the defined term should be “suspend.”
- c. In s. HFS 35.07 (5) (b), it is not necessary to include the phrase “with mental health needs and needs related to either alcohol or drug use or development disabilities,” because the definition of “dually diagnosed” in s. HFS 35.04 (4) includes all of that information.

#### **4. Adequacy of References to Related Statutes, Rules and Forms**

- a. In the analysis, a reference to s. 51.038, Stats., should be added to the list of statutes which the rules interpret. This statute allows the Council on Accreditation of Services for Families and Children standards to be used for accreditation of certain clinics.
- b. The rule repeals subch. V of ch. HFS 61 and replaces it with a new ch. HFS 35. The department should check current cross-references to the repealed provisions and replace them with updated cross-references. For example, see s. HFS 105.22 (1) (c) and (d) and (2) (b).

c. Section HFS 35.02 (2) references ss. HFS 61.50 to 61.68. If those sections are renumbered prior to promulgation of this rule, the cross-references here should be changed accordingly. (See Clearinghouse Rule 99-028.)

d. In s. HFS 35.05 (3) (b) 2., the correct reference should be to sub. (12), not to sub. (11). Subsection (12) establishes the right to a hearing. This same comment applies to s. HFS 35.05 (8) (b).

e. In s. HFS 35.07 (2) (b), ch. HFS 12 also applies to employees who the clinic contracts with. In addition, ch. HFS 12 does not apply to every applicant; it applies only to certain applicants that have contact with or access to clients. This paragraph should be revised accordingly.

f. Section HFS 35.07 (3) (b) 11. should clarify that occupational therapists are licensed under ch. 448, Stats., since all of the other subdivisions reference the chapter under which the specified professional is licensed or certified.

g. In s. HFS 35.07 (7) (a) 10., the complete citation for the Civil Rights Act of 1964 should be provided.

h. Section HFS 35.10 (7) (b) 1. references staff qualified under s. HFS 35.07 (3) (b) 11. Is this reference correct? Are occupational therapists qualified to administer medication? Was the correct reference intended to be to s. HFS 35.07 (3) (b) 10., registered nurses? If so, this reference should be corrected.

i. In s. HFS 35.10 (7) (b) 2., registered nurses are referenced as those who may dispense and label certain medications. However, only certain nurses have the authority to do so, pursuant to s. 441.16, Stats., and ch. N 8, Wis. Adm. Code.

j. In s. HFS 35.10 (7) (c), a reference to par. (a) should be inserted after the phrase “the person prescribing the medication.”

## **5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. In s. HFS 35.04 (7), major deficiencies of a clinic are listed. In s. HFS 35.05 (8) (b), a number of offenses are listed that would warrant a termination, suspension or refusal to renew a clinic certification. Are these offenses also intended to be major deficiencies? If so, perhaps they should be cross-referenced in the definition of “major deficiency” in s. HFS 35.04 (7).

b. In s. HFS 35.05 (2) (b) 1., the department’s designated representative is required to interview a representative sample of clients of the clinic who are willing to be interviewed. More detail should be provided as to what the clients are being interviewed about.

c. In s. HFS 35.05 (2) (c), it is implied that a decision to certify or not certify a clinic is based only upon the inspection. Are the application and supporting documents referenced in s.

HFS 35.05 (2) (a) 1. also utilized in the decision? If so, these should be referenced in this paragraph.

d. Section HFS 35.05 (5) (a) and (b) set forth effective dates of certification. Reading these two paragraphs together, it is confusing as to when the department determines the date of certification. Is it determined on the same day of an inspection under par. (a), is it determined from the date the written application is submitted pursuant to par. (b) or is some other date used? These two paragraphs should be coordinated with each other and made more clear.

e. In s. HFS 35.05 (7), the word “fees” should be changed to “a fee” to agree with the title of that subsection. Also, how will a person be able to find out what the fee is?

f. Section HFS 35.05 (9) (b) states that lack of knowledge by a clinic administrator or a good faith response by a clinic shall be an affirmative defense in response to an action against the clinic by the department. Should “a defense” be substituted for “an affirmative defense”?

g. In s. HFS 35.05 (10) (d), the department is directed to issue a notice of deficiency to a clinic that has one or more “minor deficiencies.” However, in s. HFS 35.05 (3) (a) 3., six minor deficiencies could lead to denial of certification. Is it the department’s intent that a clinic certification be suspended if the number of minor deficiencies reaches six? If so, these different rule provisions should be coordinated.

h. In s. HFS 35.05 (11), if minor deficiencies are found, the department is directed to issue a notice to the clinic that the deficiencies exist and offer a clinic provisional certification pending correction of the deficiencies. Again, s. HFS 35.05 (3) (a) 3. notes that six minor deficiencies could lead to denial of certification. These different rule provisions should be coordinated.

i. In s. HFS 35.05 (14), should the term “community mental health clinics” be changed to “outpatient mental health clinics”?

j. In s. HFS 35.07 (2) (a) 2., the subdivision should begin with the verb “Document” so the syntax of the subdivision agrees with the other subdivisions. The subdivision should read: “Document references and recommendations either by letter or in a signed and dated record of a verbal contact.”

k. In s. HFS 35.07 (3) (b) 12., “advanced” should replace “advance.”

l. Section HFS 35.10 (3) (a) 3. states that outpatient psychotherapy services shall be delivered pursuant to a physician’s prescription. Is a prescription the common method for authorizing psychotherapy?

m. Section HFS 35.10 (5) (c) references a person “providing primary mental health services for a client.” What is the method for assigning this primary responsibility? This should be clarified because this person has duties under the rule that do not apply to other staff persons.

n. In s. HFS 35.10 (7) (a) 5., the subdivision should begin with a verb and should read as follows: "Report any changes in medication to staff providing mental health services to the client."

o. In s. HFS 35.10 (9) (a) 2. a., it is implied that a plateau in treatment could lead to termination of services. If a plateau in treatment is common and possibly temporary, should the reference to a plateau in treatment be deleted here? The subparagraph could be rephrased as follows: "The client has reached the point where further services are likely to have little or no benefit for the client."